

PUBLIC HEALTH COUNCIL

Meeting of the Public Health Council, Thursday, April 3, 2003 (in lieu of March 25), 10 a.m., Massachusetts Department of Public Health, 250 Washington Street, Boston, Massachusetts. Public Health Council Members present were: Commissioner Ferguson, Chair, Mr. Manthala George, Jr., Ms. Shane Kearney Masaschi, Mr. Albert Sherman and Ms. Janet Slemenda. Absent were Ms. Phyllis Cudmore, Ms. Maureen Pompeo, Dr. Thomas Sterne and Dr. Martin Williams. Also in attendance were General Counsel, Attorney Donna Levin and First Deputy General Counsel, Attorney Susan Stein.

Chair Christine Ferguson announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance, in accordance with the Massachusetts General Laws, Chapter 30A, Section 11A ½.

The following members of the staff appeared before the Council to discuss and advise on matters pertaining to their particular interests: Ms. Sally Fogerty, Assistant Commissioner, Bureau of Family and Community Health; Ms. Nancy Ridley, Assistant Commissioner, Bureau of Health Quality Management; Ms. Carol Weisberg, Assistant Commissioner of Finance; Dr. Paul Dreyer, Director, Division of Health Care Quality; Ms. Louise Goyette, Director, Office of Emergency Medical Services; Attorney Kalina Vendetti, Deputy General Counsel; Ms. Joyce James, Director and Ms. Holly Wright, Analyst, Determination of Need Program.

RECORDS OF THE PUBLIC HEALTH COUNCIL:

Records of the Public Health Council Meeting of November 19, 2002 were presented to the Council. After consideration, upon motion made and duly seconded, it was voted (unanimously) to approve Records of the Public Health Council Meeting of November 19, 2002.

PERSONNEL ACTIONS:

In a letter dated March 6, 2003, Katherine Domoto, M.D., Associate Executive Director for Medicine, Tewksbury Hospital, Tewksbury, recommended approval of appointment and reappointments to the various medical staffs of Tewksbury Hospital. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Associate Executive Director for Medicine of Tewksbury Hospital, under the authority of the Massachusetts General laws, Chapter 17, Section 6, the following appointment and

reappointments to the various medical staffs of Tewksbury Hospital be approved for a period of two years beginning March 1, 2003 to March 1, 2005:

<u>PHYSICIAN APPOINTMENT</u>	<u>STATUS/ SPECIALTY</u>	<u>MEDICAL LICENSE NO.</u>
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Anthony Vagnucci, M.D.	Provisional Active/Psychiatry	158102
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<u>REAPPOINTMENTS</u>	<u>STATUS/ SPECIALTY</u>	<u>MEDICAL LICENSE NO.</u>
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Mark Albanese, M.D.	Consultant Staff Psychiatry	71493
Edward Khantzian, M.D.	Active Staff Psychiatry	28153
Robert Karr, M.D.	Active Staff Psychiatry	73911
Gauri Bhide, M.D.	Consultant Staff Hematology/Oncology	76591

In a letter dated March 10, 2003, Paul D. Romary, Executive Director, Lemuel Shattuck Hospital, Jamaica Plain, recommended approval of initial appointments and reappointments to the medical and allied health professional staffs of Lemuel Shattuck Hospital. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Executive Director of Lemuel Shattuck Hospital, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the initial appointments and reappointments to the medical and allied health professional staffs of Lemuel Shattuck Hospital be approved as follows:

<u>PHYSICIAN APPOINTMENTS</u>	<u>STATUS/ SPECIALTY</u>	<u>MEDICAL LICENSE NO.</u>
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Elissa Ehrlich, M.D.	Consultant Internal Med.	214021
Maureen Malin, M.D.	Consultant Psychiatry	56998
Kavita Mamtara, M.D.	Consultant Radiology	213893

<u>REAPPOINTMENTS</u>	<u>STATUS/ SPECIALTY</u>	<u>MEDICAL LICENSE NO.</u>
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Tai Jin Chung, M.D.	Active Medicine Nephrology	34685
Catherine Pierce, M.D.	Consultant Internal Medicine	60119
Robin Reed, M.D.	Active Internal Medicine	54662
David Stone, M.D.	Active	54398

	Internal Medicine	
	Infectious Disease	
James Burch, M.D.	Consultant	154995
	Radiology	
Sami Erbay, M.D.	Consultant	152649
	Radiology	
Roger Graham, M.D.	Consultant	70380
	General Surgery	
Robert Schlesinger, M.D.	Consultant	32227
	Surgery Urology	

Allied Health Professionals

David Gansler, Ph.D.	4912
Nancy Moczynski, Ph.D	6590
Marcia Sommer-Winfrey, PA	198

In a letter dated February 28, 2003, Blake M. Molleur, Executive Director, Western Massachusetts Hospital, Westfield, recommended approval of reappointments of physicians to the affiliate and consulting medical staff of Western Massachusetts Hospital. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of Executive Director of Western Massachusetts Hospital, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the following reappointments of physicians to the affiliate and consulting medical staff of Western Massachusetts Hospital, be approved:

REAPPOINTMENTS: STATUS/SPECIALTY: MED. LICENSE NO.:

Jonathan Slater, M.D.	Nephrology	8101
Kollegal Murthy, M.D.	General Medicine; Hematology; Oncology	56320

In a letter dated March 20, 2003, Christine Ferguson, Commissioner, Department of Public Health, recommended approval of the appointment of Cynthia A. Larson to Administrator VII, Director, Public Health Emergency Preparedness. Supporting documentation of the appointee's qualifications accompanied the recommendation. After consideration of the appointee's qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Commissioner of Public Health, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the appointment of Cynthia A. Larson to Administrator VII (Director, Public Health Emergency Preparedness) be approved.

STAFF PRESENTATION:

**“MASSACHUSETTS BIRTHS 2001”, BY CHRISTINE JUDGE,
EPIDEMIOLOGIST, BUREAU OF HEALTH SATISTICS, RESEARCH AND
EVALUATION, AND MS. SALLY FOGERTY, ASSISTANT COMMISSIONER,
BUREAU OF FAMILY AND COMMUNITY HEALTH**

Ms. Christine Judge, Epidemiologist, Bureau of Health Statistics, Research and Evaluation and Ms. Sally Fogerty, Assistant Commissioner, Bureau of Family and Community Health, presented the staff report “Massachusetts Births 2001”. Some highlights of the report are listed below.

2001 Highlights: Trends

- **The teen birth rate continues its steady decline of the last ten years.** In 2001, the teen birth rate was 24.3 births per 1,000 females ages 15-19, compared to 25.8 in 2000. The teen birth rate has declined 31% since 1990.
- **The infant mortality rate increased from 2000 to 2001, from an all-time low of 4.6 infant deaths per 1,000 live births in 2000 to 5.0 in 2001.** This increase was not statistically significant. Despite the increase between 2000 and 2001, the overall trend of decreasing infant mortality remains stable in Massachusetts. The infant mortality rate has decreased by 29% since 1990.
- **Cesarean section delivery rates continue to increase in Massachusetts.** In 2001, 25.6% of all births to Massachusetts residents were delivered by c-section. This is an 8% increase from the 2000 c-section rate. Since 1997, c-section rates have increased by an average of 7% per year.
- **The percentage of women smoking during pregnancy decreased** from 9.7% in 2000 to 9.1% in 2001. The rate of smoking during pregnancy has decreased 53% since 1990 (19.3%).
- **The ten-year trend of increasing numbers of multiple births continues.** The percentage of multiple births increased slightly from 4.3% of births in 2000 to 4.4% in 2001. The percentage of multiple births in Massachusetts has increased 69% since 1990 (2.6%).

Number and Rate of Births

- **The number of births to MA residents declined by about 1% between 2000 and 2001,** from 81,582 to 81,014. Since 1990, the number of births in Massachusetts has declined by 12%, and the birth rate among women of reproductive age has declined by 9% (from 62.1 to 56.8 births per 1,000 females ages 15-44).

Infant Mortality

- **The infant mortality rate (IMR) in 2001 was 5.0 infant deaths per 1,000 births, compared with 4.6 in 2000.** The infant mortality rate has decreased 29% since 1990. There were a total of 407 infant deaths in 2001, compared with 377 in 2000.
- **The IMR decreased among black non-Hispanics (12.8 to 12.1), but increased for Hispanics (5.2 to 7.3) and white non-Hispanics (3.8 to 4.1) from 2000 to 2001.** The IMR for Asians decreased from 4.1 to 3.1. Note: the IMR for Asians should be interpreted with caution due to the small number of infant deaths involved.

Pregnancy-Associated Mortality

In 2001, 21 pregnancy-associated deaths, including 4 maternal deaths, occurred in Massachusetts. The pregnancy-associated mortality ratio (PAMR) was 25.5 pregnancy-associated deaths per 100,000 live births occurring in Massachusetts, and the maternal mortality ratio (MMR) was 4.9 maternal deaths per 100,000 live births occurring in Massachusetts. Although there was some fluctuation in the PAMR and the MMR between 1990 and 2001, the differences are not statistically significant due to the small number of occurrences.

Teen Births

Teen births decreased between 2000 and 2001, from a total of 5,305 births to females ages 15-19 to 4,979 births. The rate in 2001 was 24.3 births per 1,000 females ages 15-19, a 6% decrease from the 2000 rate of 25.8. The teen birth rate in Massachusetts has declined by 31% since 1990.

The low birthweight percentage among births to teen mothers (ages 15-19) was 9.8% in 2001, compared with 7.0% among births to mothers ages 20 and older in 2000.

Among Massachusetts municipalities in 2001, teen birth rates were highest in Lawrence (95.2 per 1,000 females ages 15-19), Holyoke (87.9), Chelsea (80.8), Southbridge (77.3), and Springfield (71.4).

Low Birthweight

The percentage of low birthweight infants (LBW: weighing less than 5.5 pounds) increased to 7.2% in 2001 (from 7.1% in 1999 and 2000) Since 1990, the percentage of low birthweight infants has increased by 24%, from 5.8 in 1990 to 7.2% in 2001.

Preterm Deliveries

The percentage of preterm infants (delivered before the 37th week of gestation) decreased from 8.3% in 2000 to 8.0% in 2001. Preterm rates decreased for all race and

Hispanic ethnicity groups, but decreases were greatest for Asians (a 15% decrease; from 7.4% to 6.3%) and black non-Hispanics (a 5% decrease; from 12.7% to 12.1%).

The percentage of infants delivered very early (before the 28th week of gestation) remained the same in 2001 as in 2000 (0.6%). As in 2000, the percentage of infants delivered before 28 weeks of gestation among black non-Hispanics in 2001 (2.0%) was more than double that of any other group.

Smoking

The percentage of women who smoked during pregnancy decreased from 9.7% in 2000 to 9.1% in 2001. Decreases in smoking during pregnancy occurred among all race and Hispanic ethnicity groups.

Prenatal Care

Adequacy of prenatal care increased from 83.3% in 2000 to 85.2% in 2001.

Adequacy of prenatal care is a measure of the timing and number of prenatal care visits, not an assessment of the quality of prenatal care.

Cesarean Sections

The cesarean section delivery rates are increasing. The cesarean section rate among births to Massachusetts residents was 25.6% in 2001, an increase of 8% from 2000 (23.8%). Increases were among both primary and repeat c-sections. The primary c-section rate increased by 6%, from 17.7% to 18.7%, and the repeat c-section rate increased by 7%, from 75.2% to 80.6%. Accordingly, the rate of vaginal births after cesarean section (VBAC) deliveries decreased substantially, from 24.8% in 2000 to 19.4% in 2001, a decrease of 22%.

Breastfeeding

The rate of mothers breastfeeding or intending to breastfeed increased from 73.8% in 2000 to 75.3% in 2001. The breastfeeding rate increased for all major race/Hispanic ethnicity groups, but the largest increase between 2000 and 2001 was among Asians (5% increase; from 76.4% to 79.8%), followed by Hispanics (4% increase; from 75.4% to 78.1%), black non-Hispanics (3% increase; from 73.3% to 75.8%) and white non-Hispanics (1% increase; from 73.3% to 74.3%).

Public Source of Prenatal Care Payment

The percentage of mothers paying for prenatal care through a public source **increased** between 2000 and 2001, from **27.5% to 27.8%.**

Multiple Births

The percentage of multiple births (twins, triplets, and higher order) continues to increase; 4.4% of births in 2001 were multiples, compared with 4.3% in 2000. This percentage has risen steadily since 1990 (2.6%). The increase between 2000 and 2001 is mostly attributable to mothers ages 35 and over, but there was also a small increase among mothers under age 35. The percentage of multiples among births to mothers ages 35+ (7.0%) is almost double the percentage for mothers under age 35 (3.7%).

Comparison of Massachusetts and U.S. Indicators

Massachusetts perinatal health indicators in 2001 were generally better than those for the U.S. in 2001.

According to final U.S. birth statistics for 2001 and preliminary U.S. death statistics for 2001, comparisons were as follows:

- The **birth rate** for women ages 15-44 in Massachusetts (56.8) was **15% lower** than the U.S. birth rate (66.9).
- The **infant mortality rate (IMR)** in Massachusetts (5.0) was **28% lower** than the U.S. IMR (6.9).
- The **teen birth rate** in Massachusetts (24.3) was **47% lower** than the U.S. teen birth rate (45.8).
- The **low birthweight** rate in Massachusetts (7.2%) was **7% lower** than the U.S. low birthweight rate (7.7%).
- The **percentage of women receiving prenatal care in the first trimester** in Massachusetts (84.3%) was **slightly higher** than the U.S. percentage (83.4%).

Comparison of Massachusetts and U.S. Indicators

- The **cesarean section delivery rate** in Massachusetts (25.6%) was **5% higher** than the U.S. c-section rate (24.4%).

EMERGENCY REGULATIONS: Limited Staff Discussion

REQUEST FOR APPROVAL TO PROMULGATE EMERGENCY AMENDMENTS TO 105 CMR 170.000: EMERGENCY MEDICAL SERVICES SYSTEM, FOR INCREASES IN LICENSURE AND CERTIFICATION FEES:

Ms. Carol Weisberg, Assistant Commissioner for Finance, Massachusetts Department of Public Health, said, "In January the Commonwealth was facing an estimated \$600,000,000 revenue shortfall. At that time, EOHHS was directed to develop a combination of program spending reductions and various revenue enhancement initiatives. One of the Department of Public Health's revenue initiatives that we were directed to pursue was the doubling of our existing fees with the hope that it would generate \$1,000,000 in the last quarter of fiscal year 2003. The fees that are set by EOAF and 801 CMR have all been increased, with the effective date of February 10 of this

fiscal year. We are currently working with EOAF on a second phase for Fiscal year 2003, which we will be tripling most of our fees. And the goal for fiscal year 2004, is to generate an additional \$6,000,000. The rest of the fees that are set by EOAF have already been increased, and we are working on collecting that revenue at this time.”

Ms. Nancy Ridley, Assistant Commissioner for the Bureau of Health Quality Management said in part, “...The purpose of this memorandum is to seek the Council’s approval to promulgate as emergency regulations, amendments to 105 CMR 170.000, Emergency Medical Services System regulations. The Department is seeking emergency promulgation to raise EMS licensure, inspection and certification fees immediately, due to the state’s fiscal crisis. The Executive Office of Administration and Finance, whose regulations set the majority of state fees, promulgated emergency regulations in February 2003 to double many fees assessed by state agencies, including the Department. Those fee increases are now in effect. Fees governing ambulance service licensure , ambulance vehicle inspections and emergency medical technician (EMT) certification fall outside the Administration and Finance regulations. The Department itself sets these fees, pursuant to its authority under M.G.L. c. 111C, S 3 (b) (21), in its Emergency Medical Services System regulations. To ensure consistency with other Departmental and state agency fee increases, the Department is seeking to promulgate emergency regulations at this time to double all emergency medical services fees. This emergency set of regulations doubles all current fees collected by OEMS, including ambulance service licensure fees, ambulance vehicle inspection fees and EMT certification and testing fees. The emergency regulations also include technical changes to the EMT initial certification and testing fees structure, to clarify the fees required as the Department continues transitioning administration of its written EMT exam to its contracted private vendor. If approved, the Department intends to file these amendments to become effective April 15, 2003. The Department will hold a public hearing in May or June to receive comments on this emergency set of regulations.”

After consideration, upon motion made and duly seconded, it was voted unanimously to **approve Emergency Promulgation of Amendments to 105 CMR 170.000 Emergency Medical Services System, for Increases in Licensure and Certification**, that a copy of the Emergency amendments be forwarded to the Secretary of the Commonwealth and that a copy of the emergency amendments be attached to and made a part of this record as **Exhibit Number 14,753**. After the public hearing, the emergency regulations return to Council for final approval.

REQUEST FOR EMERGENCY PROMULGATION OF AN AMENDMENT TO 105 CMR 157.140 TO INCREASE THE FEES FOR REGISTRATION AS A TEMPORARY NURSING SERVICE AGENCY:

Ms. Nancy Ridley, Assistant Commissioner, Bureau of Health Quality Management, said in part, “The purpose of this memorandum is to seek the Council’s approval to promulgate as an emergency regulation an amendment to 105 CMR 157.000, regulations for the Registration and Operation of Temporary Nursing Service Agencies. The Department is seeking emergency promulgation to raise temporary nursing service

agency fees for registration application immediately, due to the state's fiscal crisis. The Division of Health Care Quality, whose regulations set the fee for the registration of temporary nursing service agencies, seeks to promulgate an emergency regulation to raise the fee assessed by the Department. The Department sets this fee, pursuant to its authority under M.G.L.c.111 s, 72Y, in 105 CMR.157.000. To ensure consistency with other Department and state agency fee increases, and to protect the public's right to high quality health care, the Department is seeking to make an emergency amendment to the regulation at this time to raise the fee collected for applying for registration as a temporary nursing service agency from \$250.00 to \$750.00 for a single location and from \$100.00 to \$300.00 for each additional separate location operated by the same temporary nursing service agency. If approved, the Department intends to file this amendment immediately. The Department will hold a public hearing in May or June to receive comments on this emergency amendment to the regulation."

After consideration, upon motion made and duly seconded, it was voted unanimously to **approve Emergency Promulgation of an Amendment to 105 CMR 157.140 to Increase the Fees for Registration as a Temporary Nursing Service Agency**; that a copy of the emergency amendment be forwarded to the Secretary of the Commonwealth and that a copy of the emergency regulations be attached to and made a part of this record as **Exhibit Number 14,754**. After the public hearing, the emergency amendment returns to Council for final approval.

MISCELLANEOUS:

REQUEST FOR ADOPTION OF THE MAGISTRATE'S DECISION AS THE FINAL DECISION OF THE DEPARTMENT IN THE MATTER OF THE DEPARTMENT OF PUBLIC HEALTH V. NEWCARE MASS NURSING INC., NEWCARE HEALTH CORP.:

Attorney Kalina Vendetti, Deputy General Counsel, said, "This matter originally arose as a suitability and licensure matter in 1998. The Department received notices of intent to acquire four nursing homes in Western Massachusetts - four financially distressed nursing homes which would have closed had their ownership not transferred. The Department reviewed the applications from Newcare Mass Nursing, Inc. and determined that it needed additional safeguards to ensure that sufficient revenues would flow to the homes to protect the quality of care for the patients in those homes. Newcare entered into an agreement that it would abide by nine additional conditions and that a violation of any of those conditions would be grounds for revocation of the licenses issued and a determination that they were unsuitable. The Department collected information from Newcare over the next few months and in February of 1999, the Department found Newcare suitable and allowed them to apply for licenses. The licenses were retroactive to December 1st. By June of that year, however, the Department discovered that Newcare was in violation of at least three of the conditions of their probational suitability. One of the conditions was that they would establish a \$500,000 escrow account. This would be available to the facilities for operational needs, and would be available to the regional manager of the facilities. Another condition was that they would establish a \$1.5 million

line of credit, also intended to address any financial issues that arose in the facilities during that time.

Attorney Vendetti continued, “Another condition was that they would establish a quality assurance program to monitor and maintain high quality of care in the four facilities. The Department discovered that on the day that it was advised that the escrow account was funded, the escrow account was depleted. I also discovered that no QA program had been developed and that no line of credit had been established, although documents had been submitted in support of compliance with all of these conditions. The Department mounted an agency action in July of that year and over the ensuing months, Newcare filed for bankruptcy. The Department engaged in negotiations with the Bankruptcy Court and with Newcare and finally went to hearing on May 9, 2000. By the time Newcare went to hearing with the Department, three of the nursing homes had closed and one of the nursing homes had been sold. And so the issue of licensure revoked was moot at that point. The only issues going to hearing then were whether Newcare violated the three conditions of suitability and whether the remaining respondents were suitable to operate nursing homes in Massachusetts. By the time it went to hearing, of the 19 original respondents named in the Department’s agency action, only three remained...These licensees argued that because they were merely officers or directors of the corporation, that they were not properly licensees, as contemplated by the Department’s definition of licensee. The Administrative Magistrate, Chief Magistrate Connolly, determined in his findings that they were, in fact, properly named as licensees of these facilities. And he also determined in his findings that they did violate the three conditions of probational suitability. I am here to ask that the Public Health Council adopt the Magistrate’s findings as a final agency action, and that these three respondents, as well as the ones who have been defaulted and dismissed, are deemed unsuitable to operate long-term care facilities in Massachusetts.”

After consideration, upon motion made and duly seconded, it was voted: unanimously that, the **Request for Adoption of the Magistrate’s Decision as the Final Decision of the Department in the Matter of the Department of Public Health v. Newcare Mass. Nursing, Inc., Newcare Health Corp.** be approved.

DETERMINATION OF NEED PROGRAM:

GUIDELINES:

REQUEST APPROVAL TO EXTEND THE EXPIRATION DATE OF THE REVISED DETERMINATION OF NEED GUIDELINES FOR CHRONIC DISEASE AND ACUTE INPATIENT REHABILITATION SERVICES:

Ms. Joyce James, Director, Determination of Need Program, said, “We are seeking Council’s approval to extend for one year, from March 26, 2003 to April 3, 2004, the revised guidelines for chronic disease and acute inpatient rehabilitation services. These guidelines allow the one time increase of beds for those providers who have not added beds under the guidelines. Department staff plan to re-examine the guidelines, based on

more current utilization data from the Division of Health Care Finance and Policy, and also to consider the impact of the prospective payment reimbursement system and the current nursing shortage on the utilization of and need for services. If this extension is approved, we will present to Council revised guidelines within the year for adoption.”

After consideration, upon motion made and duly seconded, it was voted unanimously **to approve the Request to Extend the Expiration Date of the Revised Determination of Need Guidelines for Chronic Disease and Acute Inpatient Rehabilitation Services.**

ALTERNATE PROCESS FOR TRANSFER OF OWNERSHIP APPLICATION:

PROJECT APPLICATION NO. 4-3A30 OF BRAINTREE HOSPITAL, LLC, C/O COMMONWEALTH COMMUNITIES, INC. – REQUEST FOR TRANSFER OF OWNERSHIP AND ORIGINAL LICENSURE OF OLYMPUS SPECIALTY HOSPITAL – WALTHAM, RESULTING FROM ACQUISITION OF THE HOSPITAL’S ASSETS BY BRAINTREE HOSPITAL, LLC AS PART OF A CHAPTER 11 REORGANIZATION PLAN:

Ms. Joyce James, Director, Determination of Need Program, said, “Presented to you for consideration is the proposed transfer of ownership of Olympus Specialty Hospital, Waltham, resulting from acquisition of the hospital’s assets by the applicant, Braintree Hospital, LLC, as part of a Chapter 11 bankruptcy reorganization plan, pursuant to the order of the Bankruptcy Court in Wilmington, Delaware. We are recommending approval of the proposed transfer of ownership under the alternate process for transfer of ownership of existing hospitals, pursuant to 105 CMR 100.600 to 100.603, because we find that the application satisfies the standards applied under the process. Comments were submitted by Behar & Kalman on behalf of New England Sinai Hospital, recommending denial of the application. The major thrust of the arguments supporting this recommendation of denial is that the hospital is not an existing facility because the beds have been out of service and, therefore, does not meet the prerequisites for application submission and standards applied under the alternate process. We disagree with this assessment of the hospital’s status, and we also disagree with the recommendation of denial. According to the Department’s Division of Health Care Quality, Olympus Specialty Hospital is a duly licensed facility and the beds were out of service with the Department’s approval. Another recommendation made by the comments is that in the event the application is approved, a condition should be attached prohibiting transfer of site is not under consideration as part of this application. We find no basis to recommend denial of the application, therefore, we continue to recommend approval.”

After consideration, upon motion made and duly seconded, it was voted unanimously to **approve Project Application No. 4-3A30 of Braintree Hospital, LLC, c/o Commonwealth Communities, Inc.- Request for transfer of ownership and original licensure of Olympus Specialty Hospital, Waltham,** resulting from acquisition of the hospital’s assets by Braintree Hospital, LLC as part of a Chapter 11 reorganization plan.

CATEGORY 2 APPLICATION:

Note: For the record, General Counsel, Donna Levin, stepped out during Docket Items 7 and 8, citing Chapter 268A. Deputy General Counsel Susan Stein presided as counsel.

PROJECT APPLICATION NO. 5-4898 OF CARITAS CHRISTI DIAGNOSTIC SUPPORT SERVICES, INC., TO EXPAND ITS EXISTING MAGNETIC RESONANCE (MRI) SERVICE BY CONVERTING AN EXISTING MOBILE MRI UNIT TO A FIXED-SITE MRI UNIT TO BE LOCATED IN THE RADIOLOGY DEPARTMENT OF CARITAS GOOD SAMARITAN MEDICAL CENTER AT 235 NORTH PEARL STREET, BROCKTON, MA:

Ms. Holly Phelps, Analyst, Determination of Need Program, said, “Caritas Christi Diagnostic Support Services is a member of the Caritas Christi Health System. It provides mobile MRI units to two of the hospitals: St. Elizabeth in Brighton and Caritas Good Samaritan in Brockton. The proposal is to convert the MRI service at Caritas Good Samaritan from a mobile service that operates five days a week to a fixed base service that operates seven days a week. In order to expand services you need a DON. Ordinarily, this would be handled through our delegated review process, but since two Ten Taxpayer groups did file on the application, it is before you today. We reviewed the proposal against the MRI guidelines and found that it met the guidelines. Also, we found that the maximum capital expenditure of \$2.5 million and the incremental operating costs of \$650,000 were reasonable when compared with recently approved projects. We found that the project was within the financial capability of the applicant. There were two Ten Taxpayer groups that filed on this project. The first is the Robert Hughes Ten Taxpayer Group, and that group represents Brockton Hospital. The second was the Kenneth Scott Ten Taxpayer Group and that Ten Taxpayer Group represents advocates for victims of priest sexual abuse. At the request of the victim advocate group, a public hearing was held and there were two issues that were raised. They were both financial. The first was a cost item in the application that appeared to be excessive, but it was easily explained by the applicant upon some discussion. The other issue, which was also satisfactorily addressed by the applicant, was the issue of the financial relationship between the Boston Archdiocese and Caritas Christi. The question was were they financially independent. And the applicant stated that they were financially independent and that, in fact, no money flows from the Archdiocese to Caritas Christi and vice versa. In conclusion, staff is recommending approval of the project with the conditions listed in the staff summary.”

After consideration, upon motion made and duly seconded, it was voted: unanimously, to **approve with conditions, Project Application No. 5-4898 of Caritas Christi Diagnostic Support Services, Inc., (a summary is attached to and made a part of this record as Exhibit Number 14,755)**, based on staff findings, with a maximum capital expenditure of \$2,592,176 (July 2002 dollars) and first year incremental operating costs of \$653,300 (July 2002 dollars). As approved, the application provides for expansion of its existing magnetic resonance (MRI) service by converting an existing mobile MRI unit

to a fixed-site MRI unit to be located in the radiology department of Caritas Good Samaritan Medical Center at 235 North Pearl Street, Brockton, MA. This Determination is subject to the following conditions:

- 1.) The Applicant shall accept the maximum capital expenditure of \$2,592,176 (July 2002 dollars) as the final cost figure except for those increases allowed pursuant to 205 CMR 100.751 and 752.
- 2.) The Applicant shall contribute 20% in equity (\$518,439 in July 2002 dollars) to the final approved maximum capital expenditure.
- 3.) Prior to licensure, the Applicant shall establish a clinical oversight committee to monitor the appropriateness and quality of MRI scans.
- 4.) For Massachusetts residents, the Applicant shall not consider ability to pay or insurance status in selecting or scheduling patients for MRI services.
- 5.) The Applicant shall agree to operate MRI equipment which has pre-market approval by the Food and Drug Administration.
- 6.) Prior to licensure, the Applicant shall submit referral agreements for CT scanning, nuclear medicine, ultrasound services and angiography.
- 7.) The total approved gross square feet (GSF) shall be 2,865 of leased space at a site in the radiology department at Caritas Good Samaritan Medical Center at 235 North Pearl Street in Brockton, Massachusetts.
- 8.) The Applicant shall contribute a total of \$129,610 (July 2002 dollars) over five years at \$25,922 per year for the projects described below.
 - Support for the programmatic activities of the Community Health Network (CHNA) 22, including the Project de Familias Activas or for their needed projects, which the CHNA may determine. The CHNA will select the fiscal recipient for these funds. Cost: \$15,922
 - MRI scans for Brockton Community Health Center patients who have no form of payment. Staff time and equipment use. Cost: \$10,000

COMPLIANCE MEMORANDUM:

PREVIOUSLY APPROVED PROJECT NO. 4-4886 OF SHIELDS IMAGING OF MASSACHUSETTS, LLC –REQUEST TO ADD BERKSHIRE MEDICAL CENTER AS A FOURTH HOST SITE TO THE MOBILE POSITRON EMISSION TOMOGRAPHY (PET) SERVICE:

Ms. Joyce James, Director, Determination of Need Program, said, “Presented for your consideration is a request filed by Shields Imaging of Massachusetts, LLC for a significant change to DoN approved Project No. 4-4886, to add Berkshire Medical center in Western Mass. as a fourth host site to the mobile Positron Emission Tomography or PET service. We recommend approval of this significant change because we find that it meets the definition of and the procedures for a significant change found at 105 CMR 100.723 and 100.726. Comments were received from Alliance Imaging, a provider of MRI services in Western Massachusetts. The comments recommend denial of the proposed significant change. And the major point of their argument supporting this recommendation is that the request is really a transfer of site disguised as a significant change, and that need for either was appropriately addressed, consistent with the Determination of Need regulations. We find these arguments disingenuous because the request certainly meets the procedures for a significant change. Also, Council in a previous decision have approved additional mobile host sites. Therefore, we find no basis for denying this request and continue to recommend approval.”

After consideration, upon motion made and duly seconded, it was voted: unanimously, **to approve the Request of Previously Approved Project No. 4-4886 of Shields Imaging of Massachusetts, LLC to add Berkshire Medical Center as a fourth host site to the mobile Positron Emission Tomography (PET) service.**

This amendment is subject to the following condition:

- All conditions attached to the original and amended approval of Project No. 4-4886 shall remain in effect.

The meeting adjourned at 11:15.

Christine Ferguson, Chair

Public Health Council